



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 3, 1996

Mr. James R. Raup  
McGinnis, Lochridge & Kilgore, L.L.P.  
1300 Capitol Center  
919 Congress Avenue  
Austin, Texas 78701

OR96-2293

Dear Mr. Raup:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 102394.

The Austin Independent School District (the "AISD") received a request for any and all documents on file with the AISD campus police relating to a specific incident involving an AISD employee and a certain student. AISD seeks to withhold the requested information based on sections 552.101, 552.108, and 552.114 of the Government Code. You have enclosed the documents AISD seeks to withhold.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (1996). You state that the documents are the subject of a pending criminal complaint.

This office has previously held that any proper custodian of records can claim the section 552.108 exception. Open Records Decision Nos. 474 (1987), 372 (1983). Accordingly, you may withhold the requested documents under § 552.108 of the Government Code and we need not address the other exceptions you have presented.<sup>1</sup>

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<sup>1</sup>We observe as you point out, that some or all of the records requested may be excepted from disclosure under the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, or section 552.114 of the Government Code. This office in Open Records Decision No. 634 (1995), concludes: (1) an educational agency or institution may withhold from public disclosure information that is

(continued...)

Although section 552.108 provides that you may withhold the information from disclosure, although you may choose to release the part of the information at issue that is not protected by Family Education Rights and Privacy Act of 1974 ("FERPA") or otherwise confidential by law. Gov't Code § 552.007.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/rho

Ref.: ID# 102394

Enclosures: Submitted documents

cc: Mr. Louis Malfaro  
President, Austin Federation of Teachers  
3000 South IH-35, Suite 175  
Austin, Texas 78704  
(w/o enclosures)

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<sup>1</sup>(...continued)

protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. *But see* 20 U.S.C. § 1232g(a)(1)(A), (d) (parent or adult student has affirmative right of access to that student's education records). *See also* Open Records Decision No. 431 (1985) (Open Records Act's exceptions to required public disclosure do not authorize withholding of "education records" from adult student).